

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 22

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No. 19

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THE DEPARTMENT OF THE TREASURY  
U.S. Customs Service

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# United States Court of International Trade

One Federal Plaza  
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## *Clerk*

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# Decisions of the United States Court of International Trade

(Slip Op. 88-45)

AL TECH SPECIALTY STEEL CORP.; ARMC0 STAINLESS STEEL DIV.; ARMC0, INC.; CARPENTER TECHNOLOGY CORP.; COLT INDUSTRIES, INC., CRUCIBLE MATERIALS GROUP; GUTERL SPECIAL STEEL CORP.; JOSLYN STAINLESS STEEL; REPUBLIC STEEL CORP.; UNIVERSAL-CYCLOPS SPECIALTY STEEL DIV., CYCLOPS CORP., PLAINTIFFS U. UNITED STATES, DEFENDANT

Consolidated Court No. 83-1-00107

Before Judge NICHOLAS TSOUICALAS.

[After remand, plaintiffs' motion for judgment on the agency record denied; action dismissed.]

(Decided April 7, 1988)

Collier, Shannon, Bill & Scott (David A. Hartquist and Laurence J. Lasoff) for plaintiff.

John R. Bolton, Assistant Attorney General; David M. Cohen, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (Sheila N. Ziff) for defendant; Linda Concannon, Office of Deputy Chief Counsel for Import Administration, Department of Commerce, of counsel.

## OPINION

TSOUICALAS, *Judge*: Plaintiffs, domestic stainless steel bar producers, commenced the above-captioned action in order to challenge aspects of the final determination of the International Trade Administration of the Department of Commerce (ITA or Commerce) in *Certain Stainless Steel Products from Spain*, 47 Fed. Reg. 51,453 (1982). In *Al Tech Specialty Steel Corp. v. United States*, 11 CIT —, 661 F. Supp. 1206 (1987), this Court affirmed that determination in part and remanded in part. The Court directed the ITA to consider whether certain stock purchases by the Bank of Spain amounted to a countervailable subsidy. *Id.* at —, 661 F. Supp. at 1214. The Court has received the decision following remand, and now affirms the agency's determination that this equity ownership does not constitute a subsidy.

Presuming familiarity with the decision in *Al Tech*, the Court does not reiterate plaintiffs' concerns regarding the purchase of the

stock of Olarra, S.A., a Spanish steel producer. Suffice to say that the remand results demonstrate the ITA has properly addressed whether the Bank of Spain's ownership interest in Olarra is a countervailable subsidy and whether any secondary effects of such ownership benefitted Olarra. The only tenable conclusion is that the purchase of a small number (the exact figure is confidential information) of shares on the open market is not a subsidy. Furthermore, given the Bank of Spain's miniscule ownership interest in Olarra, plaintiffs' allegations are, at best, highly speculative. The record evidence does not indicate that the stock purchase resulted in countervailable benefits to Olarra (for example, no evidence of loan guarantees in the period following the stock purchase).

In support of its conclusion, the ITA has relied on the methodology outlined in *Subsidies Appendix, Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina*, 49 Fed. Reg. 18,016, 18,020 (Dep't Comm. 1984):

It is well settled that government equity ownership *per se* does not confer a subsidy. Government ownership confers a subsidy only when it is on terms inconsistent with commercial considerations.

If the government buys previously issued shares on a market or directly from shareholders rather than from the company, there is no subsidy to the company. This is true no matter what price the government pays, since any overpayment benefits only the prior shareholders and not the company.

Further, the secondary benefits of subsidies are of such a highly speculative nature they are not considered in the analysis. *Id.* at 18,023.

Plaintiffs have not specifically challenged this methodological approach. Rather, as indicated in this Court's earlier opinion, plaintiffs refer to the decision in *British Steel Corp. v. United States*, 9 CIT 85, 605 F. Supp. 286 (1985). In sharp contrast to the situation presented herein, *British Steel* involved extensive equity infusions by the government essential to the survival of the nationalized company. Thus, reliance on that decision is misplaced.

In sum, the ITA's determination on remand is supported by substantial evidence and is otherwise in accordance with law. *See*, 19 U.S.C. § 1516a(b)(1)(B) (1982). Hence, the Court denies plaintiffs' motion for judgment on the agency record and dismisses this action.



# ABSTRACTED CLASS

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESS
				Item No. and
C88/53	Rao, J. March 21, 1988	Pharmacia Inc.	86-3-00356	Item 711.88 7.4% Item 712.49 6.2%
C88/54	Rao, J. March 23, 1988	A.L.M. Corp.	87-1-00044	Not stated
C88/55	Re, C.J. March 25, 1988	Sangamo Electric Co.	77-10-04382	Merchandise classified as electrical capacitors, fi variable, at 1
C88/56	Rao, J. March 25, 1988	Metpath, Inc.	85-5-00669	Item 712.05 Item 17.5%
C88/57	Rao, J. March 29, 1988	Gimbel Brothers, Inc.	86-3-00398	Items 716.10 th 716.29 Various rates f items marked Items 720.20, 7 730.28 or 740 Various rates f items marked Item 676.20 Various rates f items marked Item 676.20, 72 720.24, or 73 Various rates f items marked



# CLASSIFICATION DECISIONS

ED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
and rate	Item No. and rate		
	Item 661.95 4.3% Item 661.68 4.7%	Pharmacia Chemicals, Inc. v. U.S., 9 CIT 438 (1985)	New York Columns
	Item 793.00 Free of duty	Agreed statement of facts	Alexandria Bay Nylon waste—off standard flake
	Item A656.15 Free of duty	Sangamo Capacitor Div. v. U.S., 779 F.2d 30 (1985)	Greenville-Spartanburg Silver mica plates
fixed or 10%	712.49 7.5%	EAC Engineering v. U.S., 9 CIT 534 (1986)	Chicago Blood chemistry analysers
through	Item 698.36 4.5% for items marked "A," "B," and "D"	U.S. v. Texas Instruments, Inc., 60 CCTA 136 (1982)	New York Electronic watch modules, items marked "A" Electronic watches which consist of watch mod- ules, cases and bands, items marked "B" Electronic desk-top or hand-held calculators with watch functions, items marked "C" Electronic wrist watches with calculator functions, items marked "D"
for ed "A"	Item 676.20 4.2% for items marked "C"		
720.24, 10.35 for ed "B"			
for ed "C"			
20.20, 20.28 for ed "D"			

# ABSTRACTED CLASSIFICATION

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSMENT
				Item No.
C88/58	Rao, J. March 29, 1988	Gund, Inc.	86-3-00397	Item 737.40 9.6%
C88/59	DiCarlo, J. April 8, 1988	Border-Brokerage Co.	80-1-00097	Item 692.16 5%
C88/60	DiCarlo, J. April 12, 1988	Farwest Garments, Inc.	85-11-01679	Item 379.95 19¢ per lb 27.5% Item 383.92 12¢ per lb 22.5%
CC88/61	DiCarlo, J. April 12, 1988	Izod Outerwear	86-3-00407	Item 383.90 \$10.22 per + 27.5%
CC88/62	Tsoucalas, J. April 12, 1988	New York Air Brake Co.	87-8-00845	Item 690.35 6.8%, 6.4% 5.9%

ICATION DECISIONS — Continued

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ASSESSED and rate	HELD Item No. and rate	BASIS	PORT OF ENTRY AND MERCHANDISE
0	Item 737.30 6.4%	Agreed statement of facts	New York ≈2148 Snuff Pink and ≈2157 Funway Bear
6	Item 666.00 Free of duty	S. Madill, Ltd. v. U.S., Ct. No. 77-12-04978	Blaine Completely assembled tracked and rubber tired Madill 071 Skidder Towers
5 lb. +	Item 376.56 12.1%	Pacific Trail Sportswear v. U.S., 5 CIT 206 (1983) & Izod v. U.S., S.O. 85-72	Tacoma Men's Taslan 4 layer construction bomber style jackets & women's nylon bib overalls
2 lb. +	Item 376.56 13.5%	Izod v. U.S., S.O. 85-72	New York Women's woven nylon jackets
0 er lb. 5 4%, or	Item 690.25 0.5%	Agreed statement of facts	Philadelphia Monobloc brake disc

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## ABSTRACTED V.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
V88/22	Watson, J. March 17, 1988	Kayten Trading Co.	R61/14911. etc.	Export value
V88/23	Watson, J. March 17, 1988	National Carloading Corp.	R59/13274, etc.	Export value
V88/24	Watson, J. March 17, 1988	Trans-World Industries Inc.	R60/5937, etc.	Export value
V88/25	Watson, J. March 17, 1988	W.J. Byrnes & Co.	R58/27533, etc.	Export value
V88/26	Watson, J. March 17, 1988	W.J. Byrnes & Co.	R58/27833, etc.	Export value
V88/27	Watson, J. March 17, 1988	W.J. Byrnes & Co.	R59/3097	Export value
V88/28	Watson, J. March 17, 1988	W.J. Byrnes & Co.	R59/7669, etc.	Export value
V88/29	Watson, J. March 17, 1988	W.J. Byrnes & Co.	R61/9529, etc.	Export value
V88/30	Watson, J. March 22, 1988	Durlacher & Co.	275593A, etc.	Export value

# VALUATION DECISIONS

HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Francisco Knives & forks
F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	Chicago New York Radios & parts
Appraised values less 7.5% thereof	Agreed statement of facts	Los Angeles New York Philadelphia Sewing machines, etc.
F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Silk fabric
Appraised values less 7.5% thereof	Agreed statement of facts	New York Silk fabric
Appraised values less 7.5%	Agreed statement of facts	New York Silk
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Silk fabric
Appraised values less 7.5% thereof	Agreed statement of facts	New York Household articles
Appraised values less 7.5%	Agreed statement of facts	New York Los Angeles Rayon piece goods

U.S. COURT OF INTERNATIONAL TRADE

# ABSTRACTED VALUATION

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
V88/31	Watson, J. March 22, 1988	Trans American Import & Export Co.	R61/10210, etc.	Export value
V88/32	Watson, J. March 22, 1988	W.J. Byrnes & Co.	R59/6920, etc.	Export value
V88/33	Watson, J. March 22, 1988	W.J. Byrnes & Co.	R59/10199, etc.	Export value
V88/34	Watson, J. March 22, 1988	W.J. Byrnes & Co.	R60/20355, etc.	Export value
V88/35	Watson, J. March 22, 1988	W.R. Zanes & Co.	293335A, etc.	Export value
V88/36	Watson, J. March 31, 1988	W.J. Byrnes & Co.	R59/4920	Export value

HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	Chicago Transistor radios
F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk fabric
Appraised values less 7.5% thereof	Agreed statement of facts	New York Wool articles
Appraised value less 7.5%	Agreed statement of facts	New York Household articles
F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Houston Hooked rugs
Appraised values less 7.5% thereof	Agreed statement of facts	New York Silk





## Appeals to the U.S. Court of Appeals for the Federal Circuit

United States *v.* American Motorists Insurance Co., 11 CIT —, Slip Op. 87-141 (Dec. 23, 1987), *appeal docketed*, Nos. 88-1267 and 88-1284 (Fed. Cir. Feb. 23. & March 10, 1988).

NEC America, Inc. *v.* United States, 11 CIT —, Slip Op. 87-139 (Dec. 18, 1987), *appeal docketed*, No. 88-1258 (Fed. Cir. Feb. 23, 1988).

Rosenthal-Netter, Inc. *v.* United States, 12 CIT —, Slip Op. 88-9 (Jan. 28, 1988), *appeal docketed*, No. 88-1294 (Fed. Cir. March 16, 1988).

Alyeska Pipeline Service Co. *v.* United States, 11 CIT —, Slip Op. 87-137 (Dec. 10, 1987), *appeal docketed*, No. 88-1285 (Fed. Cir. March 10, 1988).

United States *v.* F. H. Fenderson, Inc., 11 CIT —, Slip Op. 87-108 (Sept. 25, 1987), *appeal docketed*, No. 88-1299 (Fed. Cir. March 17, 1988).

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## Decisions of the U.S. Court of Appeals for the Federal Circuit

E.C. McAfee Co. *v.* United States, 11 CIT —, Slip Op. 87-32 (March 20, 1987), *rev'd*, No. 87-1441 (Fed. Cir. March 1, 1988).

Omni U.S.A., Inc. *v.* United States, 11 CIT —, Slip Op. 87-77 (June 30, 1987), *aff'd*, No. 87-1602 (Fed. Cir. March 2, 1988).

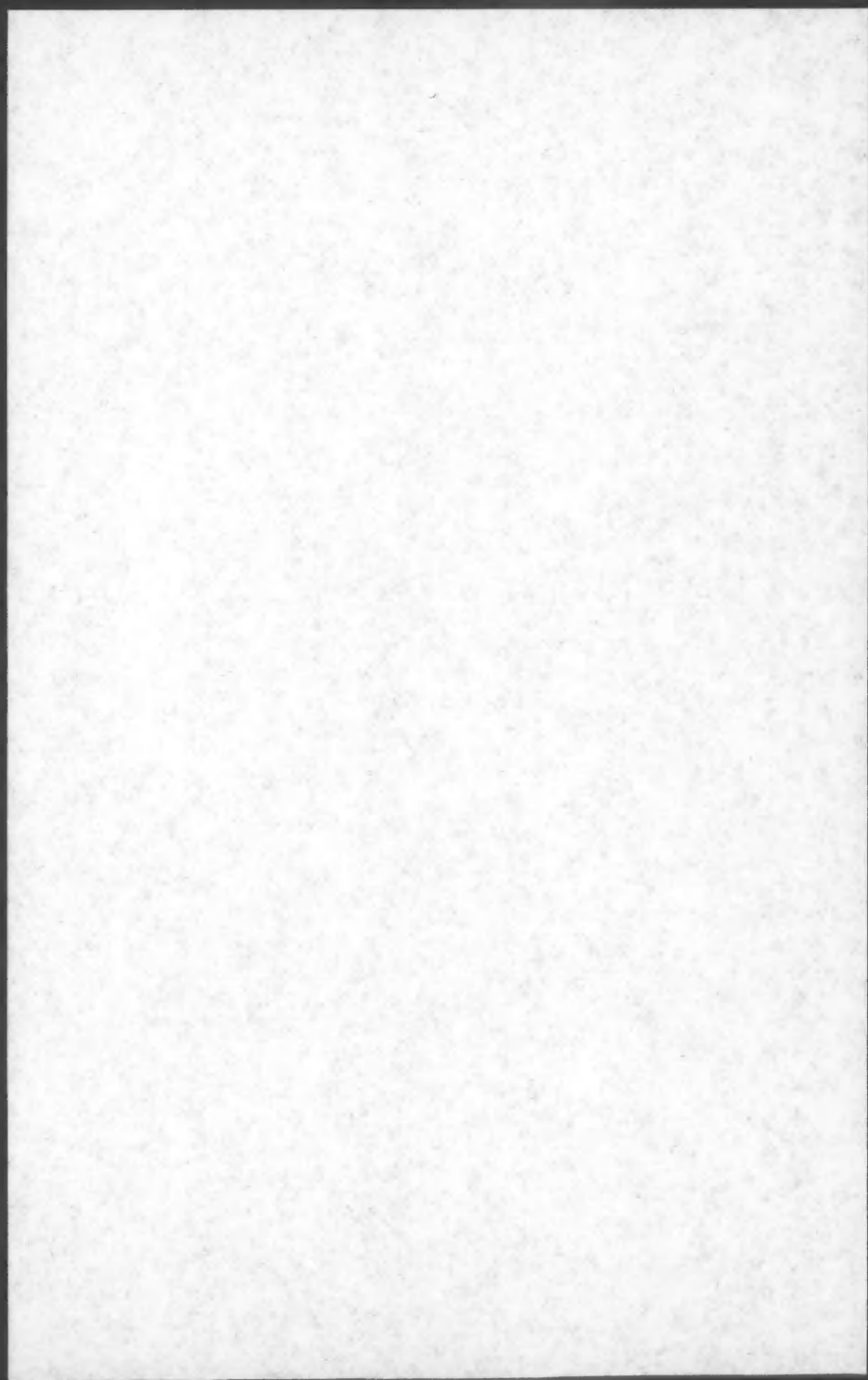
Fundicao Tupy, S.A. *v.* United States, 11 CIT —, Slip Op. 87-93 (Aug. 3, 1987), *dismissed*, No. 87-1570 (Fed. Cir. March 14, 1988).

Nissho-Iwai American Corp. *v.* United States, 11 CIT —, Slip Op. 87-38 (March 31, 1987), *aff'd*, No. 87-1388 (Fed. Cir. March 16, 1988).

Springfield Ind. Corp. *v.* United States, 11 CIT —, Slip Op. 87-56 (May 11, 1987), *rev'd*, No. 87-1469 (Fed. Cir. March 29, 1988).

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THE HISTORY OF THE  
CITY OF BOSTON

FROM THE FIRST SETTLEMENT TO THE PRESENT TIME

BY

JOHN H. COLEMAN

BOSTON: PUBLISHED BY J. B. LEECH, 1854.

